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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 || KAYLA RANI BHADRA,

11 Plaintiff,

12 | v.

13 STATE FARM FIRE AND CASUALTY
COMPANY, MIKE SHANNON
14 INSURANCE AGENCY, INC., DOES I-
X, and ROE CORPORATIONS I-X,
15 inclusive,

16 Defendants.

Case No. 2:10-cv-00089-KJD-RJJ

ORDER

18 Before the Court is Defendant Mike Shannon Insurance Agency, Inc.’s (“Shannon”) Motion
19 to Dismiss (#6). Plaintiff filed a Response in Opposition (#10), to which Defendant Shannon filed a
20 Reply (#12). Additionally before the Court is Plaintiff’s Motion to Remand (#4). Defendant State
21 Farm Mutual Automobile Insurance Company (“State Farm”) filed a Response in Opposition (#9), to
22 which Plaintiff filed a Reply (#11). The parties dispute if Defendant Shannon has been properly
23 joined in the present action.

24 | I. Background

On May 25, 2007, Plaintiff was in a car accident and sustained serious injuries. The cost of the health care necessary for recovery is estimated by Plaintiff to be in excess of \$500,000.00.

1 During May 2007, State Farm insured Plaintiff through a policy sold by Shannon.¹ Within the State
 2 Farm automotive policy sold by Defendant Shannon to Plaintiff, was a \$25,000 policy to protect
 3 Plaintiff from uninsured/underinsured drivers. Plaintiff's Complaint arises from State Farm's alleged
 4 failure to pay Plaintiff's claim under the uninsured/underinsured driver's policy.

5 Plaintiff filed suit in the Eighth Judicial District Court of Nevada on December 15, 2009,
 6 against State Farm, an Illinois corporation with its principal place of business in Illinois, and
 7 Shannon, a Nevada corporation. The Complaint alleges that Defendants each breached the
 8 respective insurance contract with Plaintiff, including breach of the implied covenant of good faith
 9 and fair dealing associated with the contract. Additionally, Plaintiff alleges four causes of action
 10 against State Farm for intentional infliction of emotional distress, insurance bad faith, declaratory
 11 relief, and unjust enrichment.

12 Defendant State Farm removed the case to federal court pursuant to 28 U.S.C. §§ 1332,
 13 1441(b), and 2201 on January 21, 2001. (See #1). State Farm asserts that Defendant Shannon was
 14 fraudulently joined by Plaintiff, and that the present dispute is a contract claim between Defendant
 15 State Farm and Plaintiff to which Defendant Shannon is not a party. As stated above, Defendant
 16 Shannon filed a Motion to Dismiss (#6) pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a
 17 claim upon which relief may be granted.

18 Plaintiff's Motion to Remand (#4) is brought pursuant to 28 U.S.C. § 1447(c) claiming there
 19 is no diversity jurisdiction between the parties because Defendant Shannon is a Nevada Corporation
 20 that is properly joined. Plaintiff alleges that each Defendant violated a duty to Plaintiff by breaching
 21 the insurance contract and associated implied covenant of good faith and fair dealing.

22 **II. Standard of Law for Motion to Dismiss**

23 Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a plaintiff's complaint for "failure
 24 to state a claim upon which relief can be granted." A properly pled complaint must provide "a short

25
 26 ¹Defendant State Farm's Response to Plaintiff's Motion to Remand indicates that Plaintiff erroneously named
 Defendant State Farm as State Farm Fire and Casualty Company in the original Complaint.

1 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
 2 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require
 3 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation
 4 of the elements of a cause of action.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing
 5 Papasan v. Allain, 478 U.S. 265, 286 (1986)). “Factual allegations must be enough to rise above the
 6 speculative level.” Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint
 7 must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” Iqbal,
 8 129 S. Ct. at 1949 (internal citation omitted).

9 In Iqbal, the Supreme Court recently clarified the two-step approach district courts are to
 10 apply when considering motions to dismiss. First, the Court must accept as true all well-pled factual
 11 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
 12 Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory
 13 statements, do not suffice. Id. at 1949. Second, the Court must consider whether the factual
 14 allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially
 15 plausible when the plaintiff’s complaint alleges facts that allow the court to draw a reasonable
 16 inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint
 17 does not permit the court to infer more than the mere possibility of misconduct, the complaint has
 18 “alleged—but not shown—that the pleader is entitled to relief.” Id. (internal quotation marks
 19 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
 20 plaintiff’s complaint must be dismissed. Twombly, 550 U.S. at 570.

21 **III. Analysis**

22 The Court first examines the appropriate standard to determine fraudulent joinder within this
 23 jurisdiction and analyzes Plaintiff’s claims against Defendant Shannon to determine if joinder is
 24 proper.

25 **A. Standard for Fraudulent Joinder**

26 The Ninth Circuit has stated that “[i]f the plaintiff fails to state a cause of action against a

1 resident defendant, and the failure is obvious according to the settled rules of the state, the
 2 joinder of the resident defendant is fraudulent.” McCabe v. General Foods Corp., 811 F.2d 1336,
 3 1339 (9th Cir. 1987). Additionally, “[t]he defendant seeking removal to the federal
 4 court is entitled to present the facts showing the joinder to be fraudulent.” *Id.* (citing Smith v.
 5 Southern Pacific Co., 187 F.2d 397 (9th Cir. 1951)). Accordingly, the Court examines the validity of
 6 Plaintiff’s claims of breach of contract and breach of implied covenant of good faith and fair dealing
 7 against Defendant Shannon. If neither claim can withstand Defendant Shannon’s Motion to Dismiss,
 8 then the joinder is fraudulent.²

9 **B. Breach of Contract**

10 The Nevada Supreme Court has stated that “[a]s a general rule, none is liable upon a contract
 11 except those who are parties to it.” County of Clark v. Bonanza No. 1, 615 P.2d 939, 943 (Nev.
 12 1980). Furthermore, the United States Supreme Court commented recently that “[i]t goes without
 13 saying that a contract cannot bind a nonparty.” E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 294
 14 (2002). “The question of the interpretation of a contract when the facts are not in dispute is a
 15 question of law,” to be decided by the court. Shelton v. Shelton, 78 P.3d 507, 510 (D. Nev. 2003).
 16 In interpreting a contract, the Court must determine whether the parties’ agreement is ambiguous.
 17 Red Rock Communications, Inc. v. American Telecasting, Inc., 2006 WL 254195 (D. Nev. 2006).
 18 The express language of a contract is considered ambiguous “if it is reasonably susceptible to more
 19 than one interpretation.” Shelton, 78 P.3d at 510.

20 The insurance contract at issue in this case is not ambiguous. Plaintiff claims that the term
 21 “agent” in the policy implies that Defendant Shannon is a party to the contract. Specifically, Plaintiff
 22 avers that the contract’s integration clause and notice provision which reference State Farm “or any

25 2Fraudulent joinder is a “term of art” which does not “impugn the integrity” of the Plaintiff. Mercado v. Allstate
 26 Ins. Co., 349 F.3d 824, 826 (9th Cir. 2003); Lewis v. Time Inc., 83 FRD 455, 460 (E.D. Cal. 1979) aff’d by 710 F.2d 549
 (9th Cir. 1983).

1 of its agents" make Shannon a party to the contract.³ The Court does not agree. The policy's
 2 integration clause states: "You [the insured] agree, by acceptance of this policy that . . . this policy
 3 contains all of the agreements between you and us or any of our agents." (Plt.'s Resp. Ex 3.) This
 4 integration clause operates to supercede any prior agreements between the insured, State Farm, and/or
 5 its agent, and does not bind nor make Shannon a party to the contract. Likewise, the policy's notice
 6 provision which requires the insured to give State Farm "or one of our agents" written notice of the
 7 accident or loss as soon as reasonably possible, does not make Shannon a party to the contract. (*Id.*)

8 Additionally, the Complaint alleges that Shannon knew, or should have known that if Plaintiff
 9 was involved in an accident and reported the claim to State Farm, that Plaintiff would reasonably
 10 expect Shannon to promptly notify State Farm to open a claim, and then to continue to "stay
 11 involved" in the handling of her claim until State Farm conducted a full and timely investigation and
 12 tendered Plaintiff's policy limits in a timely manner. (Compl. ¶¶ 6, 40, 43.) The Court does not
 13 agree. Shannon's averred actions relate to his position as an agent of State Farm. If Shannon's
 14 actions were within the scope of his agency, and violated the contract, Plaintiff's recourse would be
 15 to bring a claim against State Farm as Shannon's principal. See Vargas v. California State Auto.
 16 Ass'n Inter-Insurance Bureau, 788 F. Supp. 462, 464 (D. Nev. 1992). Plaintiff makes no allegation
 17 that Shannon acted outside of the scope of his authority as an agent of State Farm, other than to imply
 18 that State Farm has taken that position. (See Plt.'s Resp. at 17.) To date however, Defendant State
 19 Farm has done nothing to advocate said position.

20 Under Nevada law, an insurance agent that undertakes to procure an insurance policy for
 21 another owes an obligation to its client to use reasonable diligence in attempting to place the
 22 insurance, and to reasonably notify the client if he is unable to do so. Lucini-Parish Ins. v. Buck, 836
 23 P.2d 627, 629 (Nev. 1992). Here, Plaintiff's Complaint arises from the nature and extent of State
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25 ³ Though on a Rule 12(b)(6) motion the Court is generally limited to the Complaint's contents, here, the Court
 26 may consider the insurance policy because as it is "integral to the plaintiff's claims and its authenticity is undisputed."
See e.g., Fields v. Legacy Health System, 413 F.3d 943, 958 n.13 (9th Cir. 2005); Arnell v. Mayflower Transit, Inc., 968
 F. Supp. 521 (D.Nev. 1997).

1 Farm's investigation and evaluation of her underinsured motorist claim, and has nothing to do with
 2 Shannon's procurement of Plaintiff's policy with State Farm.

3 Noticeably absent from any of Plaintiff's arguments is any demonstration that Defendant
 4 Shannon had or has a contractual relationship with Plaintiff. The contract in question concerns the
 5 uninsured/underinsured motorist coverage between Plaintiff and Defendant State Farm. Because
 6 Defendant Shannon is not a party to the contract from which this issue arises, under Nevada law,
 7 Defendant Shannon could not have breached the contract. Therefore, Plaintiff's breach of contract
 8 claim against Defendant Shannon fails.

9 **C. Implied Covenant**

10 To breach the implied covenant of good faith and fair dealing, Defendant must be operating in
 11 bad faith. "Liability for bad faith is strictly tied to the implied-in-law covenant of good faith and fair
 12 dealing arising out of an underlying contractual relationship." United Fire Ins. Co. v. McClelland,
 13 780 P.2d 193, 197 (Nev. 1989). Without the contractual relationship between the parties, no
 14 recovery is permitted from breach of the covenant of good faith and fair dealing. Id. This Court has
 15 previously found that "[i]t is antithetical to the concept of the bad faith cause of action to assert that
 16 someone who is not a party to the contract may be liable for violating one of the contract's implied
 17 covenants." Vargas v. California State Auto. Ass'n Inter-Insurance Bureau, 788 F.Supp. at 465.

18 The implied covenant claim, like the breach of contract claim, requires that the parties
 19 involved be contractually obligated to one another for a possible breach to occur. Without proof of a
 20 contractual relationship between Defendant Shannon and Plaintiff, the breach of the covenant of good
 21 faith and fair dealing is not viable.

22 **D. Remedy for Fraudulent Joinder**

23 Plaintiff has failed to state a valid claim against Defendant Shannon because each of
 24 Plaintiff's claims necessitated a contractual relationship between Plaintiff and Defendant Shannon
 25 that is and was nonexistent. This Court has previously stated:
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1 Where joinder of a given defendant destroys the removability of a case, and where
2 there is no reasonable basis for predicting that the state court might impose liability on
3 the defendant, the federal court may properly dismiss such defendant and maintain
4 jurisdiction over the case. The most common example of the application of this
doctrine is in cases in which a federal court would have subject matter jurisdiction on
the basis of diversity of citizenship if not for the joinder of a given defendant; in such
cases the federal court will dismiss the case as against that defendant and allow
removal if it finds that there is no basis for the cause of action.

5 Stephans v. State of Nev., 685 F.Supp. 217, 220 (D. Nev. 1988) (internal citation omitted). Here, the
6 Court finds no basis for Plaintiff's contract-based claims against Defendant Shannon. Accordingly,
7 Plaintiff's claims against Defendant Shannon are dismissed pursuant to Fed. R. Civ. P. 12(b)(6), and
8 the Court retains jurisdiction of the remaining claims.

9 **IV. Conclusion**

10 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (#4) is
11 **DENIED**.

12 **IT IS FURTHER ORDERED** that Defendant Mike Shannon Insurance Agency, Inc.'s
13 Motion to Dismiss (#6) is **GRANTED**.

15 DATED this 1st day of June 2010.

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20 Kent J. Dawson
21 United States District Judge
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